



OFFICE OF
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INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: M. Grace Fleeman
Assistant to the Branch Chief, CC:INTL:Br1

SUBJECT:

This Field Service Advice responds to your memorandum dated April 26, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

LEGEND

Taxpayer	=
Year A	=
Year B	=
Year C	=
Year D	=
Date E	=

ISSUE

Are the survivor benefits that Taxpayer received from the U.S. government after she renounced her U.S. citizenship on Date E exempt from U.S. federal income tax under the U.S.-German income tax treaty¹ ("Treaty")?

CONCLUSION

Assuming Taxpayer is a resident of Germany and that her loss of U.S. citizenship did not have a tax avoidance purpose, we think the best reading of the Treaty is that Taxpayer's survivor benefits are exempt from U.S. federal income tax after Date E.

FACTS

Taxpayer was born in Germany in Year A. She lived in the United States during Years B through C, during which time she became a naturalized U.S. citizen. Taxpayer formally renounced her U.S. citizenship in Year D on Date E before a U.S. consular officer in Germany. At that time, she stated she was a resident of Germany.

On an attachment to Taxpayer's Form 1040 for Year D, Taxpayer stated that she was not present in the United States for any days during Year D or during the two immediately preceding years. Taxpayer's home address on her Form 1040 for Year D is a German address.

During Year D, Taxpayer received monthly survivor benefit payments from the U.S. government. Federal income tax was withheld from those payments. On Taxpayer's Form 1040 for Year D, she took the position that the survivor benefits she received after Date E were exempt from U.S. tax pursuant to Article 19 of the Treaty.

¹ Convention Between the United States of America and the Federal Republic of German for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital and Certain Other Taxes, signed on Aug. 29, 1989, and entered into force on Aug. 21, 1991, *reprinted in* 2 Tax Treaties (CCH) ¶13249.

LAW AND ANALYSIS

Paragraph 1 of Article 18 (Pensions, Annuities, Alimony, and Child Support) of the Treaty provides:

Subject to the provisions of Article 19 (Government Service; Social Security), pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Paragraph (1)(a) of Article 19 provides:

Wages, salaries, and similar compensation and pensions paid by the United States or by its states or political subdivisions to a natural person, other than a German national, shall be exempt from tax by the Federal Republic of Germany.

It appears the survivor benefits that Taxpayer received from the U.S. government during Year D constitute a “pension” that is covered by Article 19(1)(a). However, Article 19(1)(a) addresses only Germany’s right to tax the pension. (Germany can tax the pension as long as Taxpayer is a German national.) Although one could infer that the United States should be able to tax the pension under its domestic law, Article 19(1)(a) does not include such a provision.

We think the best reading of the Treaty is that the United States’ right to tax Taxpayer’s survivor benefits is governed by Article 18(1). The provisions of Article 18(1) are subject to the provisions of Article 19. Where there is no applicable provision in Article 19, it appears that Article 18 should apply. Under Article 18(1), pensions derived and beneficially owned by a resident of Germany are taxable only in Germany. Accordingly, assuming Taxpayer is a resident of Germany, her survivor benefits are not taxable by the United States after Date E.

If Taxpayer’s loss of U.S. citizenship had as one of its principal purposes the avoidance of income tax, the “saving clause” in paragraph 1(a) of the Protocol to the Treaty would allow the United States to continue to tax Taxpayer’s survivor benefits for ten years after Date E. However, there is nothing in the facts provided to us that suggests the saving clause would be applicable after Date E.

CASE DEVELOPMENT, HAZARDS, AND OTHER CONSIDERATIONS

If you have any further questions, please call the branch telephone number.

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